



ANIMAL LAW

The newsletter of the Illinois State Bar Association's Section on Animal Law

The point-and-click puppy problem—a proposed federal rule would address online puppy mills

By Page Pardo

(Editor's Note: This is Part I of a two-part series. The second part will run in next quarter's newsletter).

A simple Internet search for "puppies for sale" results in countless advertisements on classified websites like Craigslist for seemingly happy, healthy dogs. Increasing numbers of people are going online when looking for a new canine family member, oftentimes buying a puppy sight-unseen at the point and click of the mouse. This Internet market is ripe for puppy mills, which can capitalize on the chance to make online sales without having to show purchasers the conditions at their breeding facilities. Online sellers are often subject to little or no customer scrutiny, and also benefit from a loophole in the

federal law that leaves "retail pet stores" (the definition of which currently includes online retailers) exempt from the basic animal welfare standards and requirements of the Animal Welfare Act (the "AWA"). The United States Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS" is the agency charged with the enforcement of the AWA) has proposed to revise the definition of "retail pet store" in the federal regulations promulgated under the AWA (the "Regulations")¹ to close the loophole for online sellers (the "Proposed Rule"). It should be noted that the following discussion focuses on dogs, but it also applies to cats and other domestic pets covered by the AWA.

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Beloved pets—The oft-overlooked legal quagmire

By Jennifer A. Shaw, Edwardsville, Illinois

In law as in life, change is the only constant. As family lawyers, we feel that change acutely. Though every family is different, revolutionary changes in the definition and composition of families have occurred over the last generation.

Gender roles have shifted, making the female bread-winner and/or the stay-at-home dad a commonplace fact pattern. We no longer assume that Wife receives custody and Husband pays child support. In fact, we no longer assume that children born during a marriage are, in fact, products of the marriage. Same sex couples live openly in committed relationships, often within the confines of civil unions. Heterosexual couples eschew marriage for many reasons, sometimes

as a stance in alliance with their gay friends. Fewer and fewer families meet the stereotypically defined "traditional" family unit.

With these and other societal changes, the way we interview clients has also changed. More than ever, families choose to forgo children, whether living within the bonds of marriage/civil union or partnered without legal benefit. Even when children are present, we question parentage; parental roles and responsibilities; and our client's desires as to the outcome of the ultimate custodial determination. Nothing is a foregone conclusion and we ask our clients a plethora

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The point-and-click puppy problem—a proposed federal rule would address online puppy mills

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Online puppy sale trends

In order to understand the Proposed Rule and its potential impact, it is important to first consider the different types of dog breeders and the recent trend toward increasing online dog sales.

Types of breeders

Dog breeder classifications are generally based upon scale (number of animals maintained and sold each year), animal living conditions, and breeding/selling purpose. Although there is no universally accepted legal terms for classification, the following terms are commonly used:

- **Puppy mill:** Large-scale commercial dog breeding operation that disregards animal health, living conditions and responsible breeding practices in order to maximize profits
- **Hobby breeder:** Smaller breeding operation (under the AWA, breeders only qualify as hobby breeders if they stay within numerical limits on breeding females kept), generally with better living conditions and practices than puppy mills (but not necessarily); could be with the purpose of keeping puppies or with intent to sell some puppies as pets or for exhibition; may have a love of the breed or wish to advance breed confirmation (which does not always advance health)
- **Backyard breeder:** Usually refers to someone whose pet accidentally becomes pregnant, or who breeds the pet on purpose to keep a puppy or perhaps sell some puppies; may not be knowledgeable about responsible breeding practices; lack of knowledge could result in puppies with health problems
- **Responsible breeder:** Refers to any breeder that makes the health and welfare of breeding animals and offspring the first priority; they breed for health, provide appropriate living conditions, and spend the money and time necessary to give the animals the right level of care and attention

Increasing internet sales by breeders

The types of parties advertising dogs for sale online vary widely, and include all of the above discussed breeder classifications, as well as animal rescues and individuals need-

ing to find a new home for a family pet. Over the last 20 years, Internet puppy sales have grown with the general popularity of online shopping, and the public has developed an increasing awareness that many brick-and-mortar pet shop puppies are supplied by puppy mills. The problem with point-and-click puppy shopping, however, is the difficulty in determining whether the online advertiser is truly a responsible breeder or rescue group, or is really a puppy mill or other irresponsible breeder.

Sales begin in a variety of places online, such as classified websites and websites created by breeders. Both online methods of advertisement allow puppy mills an easy means of hiding inhumane practices and the sale of unhealthy animals. Puppy mill operators can advertise with stock photos of cute puppies that are totally unrelated to the actual puppies for sale. They can gain consumer trust by purporting to be animal rescues, responsible small breeders, or individual pet owners needing to re-home an animal. In addition, puppy mill puppies are often advertised as registered with the American Kennel Club ("AKC"), however this only means that the puppies' parents also were registered with the AKC, and is not indicative of a breeder's reputation. After selling puppies through deceptive online ads, puppy mills often ship the puppies to buyers sight-unseen or meet buyers at an off-site location for delivery. In many cases, consumers end up receiving unhealthy puppies from inhumane conditions, and only become aware of the animal's health condition until taking possession of the animal.

Humane organizations and animal advocates have worked to get classified websites such as Facebook Marketplace and Craigslist to ban puppy mill ads, and Facebook Marketplace has agreed to filter such ads from its website.² Craigslist also includes household pets on its prohibited items list, with the exception of allowed pet "re-homing with small adoption fee."³ However, Craigslist does not filter these prohibited ads from its website, and a search on the website for "puppies" reveals many animals for sale. Earlier this year, sales of sick puppies by one large-scale, inhumane breeding facility were specifically linked to ads on Craigslist.⁴ Because Craigslist

ads are free, they provide an attractive advertising outlet for puppy mills and backyard breeders, alike.

The Proposed Rule under the AWA

The AWA generally subjects pet wholesalers to its basic requirements and monitoring for their animals' overall health and humane treatment, and exempts "retail pet stores" from its regulation. Currently, Regulation section 1.1 defines "retail pet store" to mean any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species.⁵ This definition was written in the 1970's, and was based on the idea that most people actually went to a physical retail location, saw the puppy in the window, could observe the general conditions at the location, and knew whether the puppy was happy and healthy before taking him home. Thus, the definition assumes a certain degree of oversight of the unregulated "retail pet stores" by customers, which oversight does not occur today with respect to Internet puppy sellers making sight-unseen online sales. This loophole for online sellers results in the increased potential for receipt of unhealthy animals by online buyers, as discussed above, and contributes to the continued proliferation of puppy mills.

APHIS has proposed to close the loophole by amending the Regulation section 1.1 definition of "retail pet store" to generally require a place of business or residence that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase. Online sellers shipping puppies sight-unseen to buyers would therefore no longer come under such definition and would become subject to AWA requirements and oversight. The Proposed Rule would also make a change with respect to small hobby pet breeders currently exempt from AWA requirements, increasing from three to four the number of breeding females that these breeders may maintain on their premises and remain exempt where other requirements are met.⁶ Thus, certain hobby breeders could continue online sight-

unseen puppy sales without triggering regulation. ■

1. The Regulations are contained in the Code of Federal Regulations in 9 C.F.R. parts 1, 2, and 3.

2. News Alert, American Society for the Prevention of Cruelty to Animals, Facebook Rejects Puppy Mill Ads For Good! (Mar. 23, 2012) at <http://aspc.org/news/facebook-rejects-puppy-mill-ads-for-good>.

3. See <http://www.craigslist.org/about/prohibited.items>.

4. Press Release, Humane Society of the United States, The HSUS Applauds West Virginia Law Enforcement for Investigation of Suspected Puppy Mill (Jun. 20, 2012) at http://www.humanesociety.org/news/press_releases/2012/06/west_virginia_puppy_mill_investigation_062012.html.

5. 9 C.F.R. § 1.1. Regulation section 1.1 provides that the definition specifically excludes:

- (1) Establishments or persons who deal in dogs used for hunting, security, or breed-

ing purposes;

(2) Establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warm-blooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warm-blooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and

(4) Any establishment wholesaling any animals (except birds, rats and mice).

(5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

6. Animal Welfare; Retail Pet Stores and Licensing Exemptions, 77 Fed. Reg. 28799 (May 16, 2012) (amending 9 C.F.R. pts. 1 and 2).

Beloved pets—The oft-overlooked legal quagmire

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of questions that were previously left untouched. Nonetheless, we frequently forget to inquire as to the presence of, or the relationship with, family pets or animals.

While the family pet has been a staple of American life for many generations, our pets' roles, perceived needs, and places within the family unit have changed dramatically. I grew up with a succession of Schnauzers in a neighborhood where pets were part of the family. At that time, canine socialization meant a brief visit with other neighborhood dogs while out on a walk. I am now convinced that Bismarck's monthly escapes were part of her larger plan to attempt play with Churchill, De Gaulle and Bonkers. Yet, doggie daycare was a scoffed foreign concept—something the extremely wealthy were doing in New York and California. Bismarck was regularly vetted and groomed; she even had a \$20 sweater for the heart of winter. Yet, I can still hear our family's ridicule of the Neiman Marcus Christmas Look-Book's high-end designer collars, leashes and "active wear." When Bismarck succumbed to old age, she was buried in the backyard and memorialized with a dogwood. Had my parents divorced, however; without question she would have received no mention in the decree.

In 2005, like so many of my single, child-

free contemporaries, I became the proud owner of a rescued pug. When I started my search, little did I know that I would endure an extensive telephone interview, a home visit and a six-month post-placement interview. Shortly after her arrival, Mildred was vetted; outfitted with a soft leather collar and a bevy of winter sweaters and coats; enrolled in a doggie daycare program; and gradually introduced to spending time at the office.

Much to my surprise, she made immediate, valuable contributions to my practice. Many clients would ask to hold her or to pet her when talking about difficult topics. She instinctively knew which clients wanted her close and which clients did not. Children flocked to her and she kept them entertained so clients could speak to me without interruption. Her power to provide comfort, entertainment and joy was demonstrated on a daily basis. Many clients commented that they hired me specifically because I understood how they felt about their animals. At that point, I started to realize the evolution of society's valuation of pets.

Although she loved the attention at the office, Mildred craved play with her friends at day care. She was more content when she socialized at least twice a week. Day care was as important as food, water and love. As I wrote the check and read the daily day-care

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report cards, I quickly realized that I had become invested in Mildred—emotionally and financially.

When my partner entered the picture, Mildred's approval was as important as my parents'. Once our relationship was long-established, I would gently tease him—reminding him that the State of Illinois recognized her as my non-marital property and in the event of the termination of our relationship, Mildred would be awarded to me. After his well-formed argument detailing his contributions to her well-being and care, I would grin and say, "When you have the law, you argue the law. When you have the facts, you argue the facts. You lose."

As she aged, her expenses began to multiply. When she was diagnosed with advanced hip dysplasia and arthritis, we were referred to board-certified specialists. Eventually, her medical and dental costs rose significantly, exceeding ours. Nonetheless, withholding care was not an option. Although Mildred is near the end of her life, we do not regret one penny we have spent—even when those pennies meant a shorter vacation or fewer "things" for us.

At the end of the day, Mildred has, in essence, been my child. Once Tim integrated into our family, she became his child as well. She was included in the family pictures with my parents and brother. She is invited to extended family holiday celebrations. She may be one of the only dogs with a personalized needlepoint leash, made with love by her "Pug Gram."

Our family's relationship with our dog is far from unique. Data collected over the past decade affirmatively shows that Americans have become more willing and desirous to spend substantial portions of their disposable income on pets. This holds true across the social-economic spectrum.

The non-breeding portion of the pet industry, spanning the range of food to day care; accessories to veterinary care, is one of the few that has continued to experience at least 5 percent growth each year since 2001. The *New York Times* and *USA Today* have both commented positively on the industry's ability to withstand the recession. Advances in veterinary science have allowed people to extend the length and quality of pets' lives. Owners express greater concern about the quality of the food that their animals consume and providing their pets with healthy, vibrant lifestyles.

USA Today reported in November, 2011

that pets live within 72.9 million households, roughly two-thirds of all American households. Given the widespread ownership and increased interest in ensuring Fido's lofty place in the family, our profession must recognize that in many cases, resolving pet issues can be as important as addressing child custody and property. Accordingly, we, as practitioners must affirmatively meet our obligation to ensure that our clients' animal needs are being met in the advice we give and the legal documents we prepare.

Just as we ask probing questions about children, financial holdings and real estate, we should also be inquiring as whether clients have pets. Although technically considered property, the questions we ask about pets should more closely resemble the questions we ask about children. As with children, different families have different ways of raising, interacting and dealing with their pets. We must determine whether the parties will be able to work together to achieve the best outcome for the animals or whether court action may be required.

Within my own practice, I have handled numerous issues surrounding the custody, care and expenses of animals. Learning the questions to ask has helped me meet my clients' needs.

I always ask the following questions:

- Do you have any pets?
- What type of pets do you have?
- What are their names?
- When did you acquire the pets?
- Have you reached an agreement as to where the pets will live?
- If so, have you discussed how the pets' bills will be paid?
- What are their average food, medical, dental and accessory expenses?
- Does your pet have any extraordinary expenses?
- What type of interaction do the children have with the pets? (If applicable)
- Describe your relationship with your pets.
- Describe your spouse's relationship with your pets.

Depending on the answers, follow-up questions may be necessary. Obtaining a realistic portrait of the expenses incurred by the animals is important. This is particularly vital if the custodial parent will be primarily responsible for the pets' care. In some circumstances, a large portion of child support may literally be eaten by the animal. In those instances, you may serve your client well to attempt to negotiate an agreement about

expenses.

Recently, a client came to me after successfully mediating most issues in her divorce. In our first meeting, we reviewed the terms of the mediation agreement. She initially indicated that all issues had been addressed. After discussion, I learned that she and her husband had amassed an extensive turtle collection with accompanying accoutrements exceeding \$15,000. Although they had agreed that the turtles would remain in the marital residence until Husband relocated to his permanent residence, the move would not occur for several months. The parties had verbally agreed to a complicated schedule of cleaning and care. They had devised a formula for division of expenses relating to the turtles. None of this had been raised in mediation. The provisions were reduced to writing and the parties have followed the terms of the settlement agreement since that time. I recently learned that issues had arisen regarding certain unexpected turtle expenses. The terms of the Marital Settlement Agreement and Judgment of Dissolution of Marriage were the tools the parties needed to navigate their differences of opinion.

A few years ago, I met with a new client. She had entered into an agreed dissolution without the benefit of counsel. The parties had a side agreement to equally divide time with and expenses of their dog. One year later, my client was transferred to a new position. After writing a letter to the opposing party indicating that the Marital Settlement Agreement failed to address issues regarding "Molly," I received a panicked call from husband's original attorney. "How in the world could I forget to include a child?" she exclaimed. After the relief set in, we were able to negotiate an agreement that provided for Molly to visit Husband when Wife returned to the area for holidays and vacations. The strict letter of the law provided that as pre-marital property, Molly could have been awarded exclusively to my client. Nonetheless, she strongly believed that Molly would benefit from continued contact with her ex.

Frequently, the parties are equally attached to an animal, making settlement impossible. The law in Illinois is very clear. Animals are treated as any other property. Nonetheless, the interaction clients have with their pets is typically distinguishable from their relationship with inanimate objects. As practitioners, we have little legal guidance as to how to address the emotional attachment people have to their animals in

dividing property. We have no provisions to determine which party is best suited to be awarded the animals. Similarly, we have no provisions that allow the Court to determine which party the animal may prefer.

ISBA's Family Law Section Council has had vigorous debate as to whether additional legislation is required to address this issue. The naysayers believe this to be a slippery slope. Those in favor believe that practitioners and the judiciary desperately need direction. Some judges believe that they ab-

solutely have jurisdiction to hear testimony as to where animals should be placed. Judge Ed Jordan once described a hearing that featured a well-behaved Rottweiler as the star witness. Other judges believe they have no such jurisdiction.

Fairness dictates that the same facts, tried by the same people should obtain the same results no matter where the case is tried. As the law currently stands, this is not the case. Passing legislation regarding possession and support of pets would realize a substantial

step to guarantee decisional uniformity throughout Illinois.

Family practitioners are well aware that changes in the law lag far behind changing societal beliefs. Multiple attempts are often required to effectuate the necessary developments. Now is the time to start the process. Our clients deserve it. More importantly, their pets deserve it, too. ■

_____ This article is reprinted from the September 2012 issue of the ISBA's Family Law newsletter.

ISBA President challenges Illinois lawyers to fight hunger

It is a modern tragedy: some 1.9 million Illinoisans are considered "food insecure," lacking the ability to secure adequate, nutritious food. The problem is especially acute among children: some 600,000 Illinois kids lack access to the right type of food to lead a healthy lifestyle.

Lawyers Feeding Illinois is a positive step toward solving this problem. Our program's

goal is noble, yet simple: collect food and raise funds for distribution to the eight Feeding Illinois member food banks. Illinois Attorney General Lisa Madigan supports our efforts and will join us at the kickoff event in November.

We invite all law firms and legal organizations statewide to participate in a food and fundraising drive during the final two weeks

in February 2013. For further information, or to sign up, visit <www.lawyersfeedingil.org>.

No one in our country or state should ever go hungry because they can't afford to put food on the table. You can make a difference.

-John E. Thies

Terry Thies, Chair, Lawyers Feeding Illinois

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Climate change has begun to dramatically alter the way law is practiced in the fields of natural resources and land use. Modern natural resource law depends on historic baselines, protecting pre-existing biota, and shielding nature from human activity, which is increasingly untenable in light of climate change. Increases in temperature over the last 100 years have led species to shift their ranges, primarily toward the poles and higher altitudes. Climate change has also led to phenological changes, such as changes in the times at which birds lay eggs and plants flower. Changes in temperature are now occurring rapidly, requiring species to move long distances in exceptionally short periods of time in order to survive. At this rate, up to two-thirds of species will need to migrate or be moved to new habitats to survive by the year 2050. Perhaps the most significant impediments to range shifts are anthropogenic barriers such as cities, highways and monocultures that inhibit migrations.

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November

Thursday, 11/1/12- Teleseminar—Business Succession and Estate Planning for Closely Held Business Owners, Part 1. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/1/12- Springfield, Illinois National Bank Conference Center—Illinois Sentencing- Statutory and Case Law. Presented by the ISBA Criminal Justice Section. 9-4:30.

Thursday, 11/1/12- Bloomington, Holiday Inn and Suites—Real Estate Law Update- 2012. Presented by the Illinois State Bar Association. 9-4:30.

Thursday, 11/1/12- Friday, 11/2/12- Champaign, U of I College of Law—Attorney Education in Child Custody and Visitation Matters in 2012 and Beyond. Presented by the ISBA Bench and Bar Section. 12:30-5; 9-5.

Friday, 11/2/12- Teleseminar—Business Succession and Estate Planning for Closely Held Business Owners, Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 11/2/12- Chicago, ISBA Chicago Regional Office—Third Annual Great Lakes Antitrust Institute (viewing of Live Webcast). Presented by the ISBA Antitrust Section; co-sponsored by the Ohio State Bar Association, Indiana Continuing Legal Education Forum, and Pennsylvania Bar Institute. 8:25-5:00.

Monday, 11/5/12- Webinar—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 12-1.

Tuesday, 11/6/12- Teleseminar—Attorney Ethics in Digital Communications- Remote Networks, Smart Phones, the Cloud and More. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/7/12- Webinar—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 12-1.

Wednesday, 11/7/12- Chicago, ISBA Regional Office—Do You Buy or Merge? Presented by the ISBA Business and Securities Law. 9-12:30.

Wednesday, 11/7/12- Chicago, ISBA Regional Office—Fiduciary Risk and Ethical Challenges for Fiduciaries and Their Advisors. Presented by the ISBA Trust and Estates Section.

Wednesday, 11/7/12- LIVE Webcast—Fiduciary Risk and Ethical Challenges for Fiduciaries and Their Advisors. Presented by the ISBA Trust and Estates Section. 2-4.

Thursday, 11/8/12- Teleseminar—Real Estate Partnership/LLC Divorces. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/8/12- Chicago, ISBA Regional Office—National Healthcare Reform and Its Effect on Illinois Employers and Health Insurance. Presented by the ISBA Health Care Section. 1-4:30.

Thursday, 11/8/12- LIVE Webcast—National Healthcare Reform and Its Effect on Illinois Employers and Health Insurance. Presented by the ISBA Health Care Section. 1-4:30.

Friday, 11/9/12- Chicago, ISBA Regional Office—2012 Federal Tax Conference. Presented by the ISBA Federal Taxation Section. All day program.

Tuesday, 11/13/12-Teleseminar—UCC Article 9 Practice Toolkit: From Attachment to Remedies, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/14/12-Teleseminar—UCC Article 9 Practice Toolkit: From Attachment to Remedies, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/15/12- Chicago, ISBA Chicago Regional Office—The Student and Parent Side of School Law. Presented by the ISBA Education Law Section. All Day. Mtg Sol Rachel.

Thursday, 11/15/12- Webcast (originally presented May 31, 2012)—Neutralizing Obnoxious Conduct as Professionals and as a

Profession. Presented by the ISBA. 12-1.

Friday, 11/16/12- Chicago, ISBA Chicago Regional Office—Illinois Sentencing- Statutory and Case Law. Presented by the ISBA Criminal Justice Section. All day.

Tuesday, 11/20/12- Teleseminar—2012 FMLA Update. Presented by the Illinois State Bar Association. 12-1.

Monday, 11/26/12- Webinar—Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 12-1.

Tuesday, 11/27/12- Teleseminar—Discretionary Distributions. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/28/12- Teleseminar—Offers in Compromise. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/28/12- Chicago, ISBA Chicago Regional Office—American Invents Act- Part 1: Protecting Innovation in a First to File System. Presented by the Illinois State Bar Association. AM Program.

Wednesday, 11/28/12- Live Webcast—American Invents Act- Part 1: Protecting Innovation in a First to File System. Presented by the Illinois State Bar Association. AM Program.

Friday, 11/30/12- Chicago, ISBA Chicago Regional Office—Trial Practice Series: How to Prove (or Defend) Your Case. Presented by the ISBA Labor and Employment Section; Co-sponsored by the ISBA Civil Practice and Procedure Section. 8:55-4:15.

Friday, 11/30/12- Lombard, Lindner Conference Center—Real Estate Law Update- 2012. Presented by the Illinois State Bar Association. All day.

Friday, 11/30/12- Teleseminar—Practical UCC- Understanding and Drafting Letters of Credit in Business Transactions. Presented by the Illinois State Bar Association. 12-1. ■

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